S.B. CIVIL WRIT PETITION NO.294/2005

Trilochan Singh vs. State of Rajasthan and others.

Date : 17.1.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. G.J. Gupta, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner, by this writ petition, has sought a declaration that the proceedings initiated by the respondent no.2 – Prescribed Authority (S.D.M. [Revenue], Sri Ganganagar in Bank's money recovery case initiated under the provisions of Rajasthan Agricultural Credit Operations (Removal of Difficulties) Act, 1974 (for short the "Act of 1974") and the Rules framed thereunder be declared illegal, arbitrary and against the provisions of law. The petitioner is aggrieved against two specific orders dated 18.8.2004 and 21.8.2004. By order dated 18.8.2004, the Prescribed Authority passed the order to recover the loan amount by sale of the petitioner's land and the order dated 21.8.2004 issued attachment warrant in pursuance of the order dated 18.8.2004.

According to learned counsel for the petitioner, as per sub-section (1) of Section 13 of the Act of 1974, the prescribed authority, on an application of a

Bank can make an order directing the agriculturist for payment of due to the Bank on account of financial assistance availed by the said agriculturist. Proviso to Section 13(1) provides that no such order shall be made by the prescribed authority under this sub-section for the sale of any land or any interest therein or any other immovable property upon which the payment of money is charged or mortgaged as the case may be, unless the agriculturist has been given an opportunity of being heard and has been served with a notice by the prescribed authority calling upon him to pay the amount due and default has been made in payment thereof for three months after the determination of liability by such authority.

In view of the above, first, the authority is required to determine the amount due, second serve a notice calling upon the agriculturist to pay the amount due and third wait for three months and in case, the agriculturist fails to pay the dues, the authority may proceed.

Learned counsel for the petitioner in this regard relies upon a division bench judgment of this Court delivered in D.B. Civil Writ Petition No.3874/2004 (Chet Ram and another vs. State of Rajasthan and others) decided on 27.9.2004 wherein this Court held that,

> "It mandates in no uncertain terms that before resort can be had to recovery the amount of debt by selling the immovable property, charged or mortgaged to secure repayment, the Prescribed Authority is required to determine the liability that exists. The determination of liability is to be made after giving an opportunity of hearing to the debtor. It is only after liability of debtor is determined, the Prescribed Authority is required to give a minimum three month's notice calling upon the debtor to make payment of the sum so determined. If the debtor fails to make payment for three months after receipt of notice, only and only then, the Prescribed Authority can take recourse to realize the determined amount by sale of debtors such interest in immovable property or the immovable property which is charged or mortgaged with the Bank."

Learned counsel for the petitioner further submitted that partition has taken place between the petitioner and co-sharers of land vide Annex.3 dated 27.3.1998.

According to learned counsel for the petitioner, the prescribed authority is proceeding only against the share of the petitioner and has not passed any order against the other co-sharers.

I have considered the submissions of learned counsel for the petitioner.

Brief facts of the case are that a loan of only Rs.81,000/- was availed by the petitioner himself and respondents no.5 to 7. Respondent no.5 is real brother and respondents no.6 and 7 are real sisters of the petitioner. The amount was not paid and, therefore, the proceedings under the Act of 1974 were initiated in the year 1993. The first order-sheet reveals that the prescribed authority specifically mentioned that the bank has initiated the proceedings for recovery of the amount of Rs.1,50,836/- as the petitioner and his co-promisors availed the loan of Rs.81,000/- in the month of October, 1987 and committed default in repayment of the said loan and interest. As per the order-sheet dated 31.3.1993, that a notice was affixed on the house of the petitioner. When nobody appeared on behalf of the petitioner or any other borrower, the authorised officer passed an order to issue attachment warrant as back as on 31.3.1993. It appears that the warrant was not executed and it was pointed out by the representative of the respondent Bank that the due amount has reached to Rs.6,78,000/- and odds. On this, a fresh notice was issued to the petitioner, upon which the petitioner appeared before the prescribed authority on 17.9.2003 and requested that notices be issued to the other borrowers also. The prescribed authority passed an order to issue notice to the other borrowers on 23.10.2003. The matter remained pending for service of the other borrowers and on 12.1.2004,

the prescribed authority on finding that no reply has been filed by the petitioner, despite several opportunities, passed an order that the property of the petitioner be attached. On 18.8.2004, the prescribed authority passed the order that the petitioner's property be auctioned for recovery of the due amount.

In view of the above facts, it is clear that the loan was availed by the petitioner himself in the year 1987 along with his own real brother and sisters by mortgaging the agriculture land with the respondent bank and he did not pay a single penny since 1993. Not only this, but the petitioner was served with a notice and he came to know that an amount of more than Rs.6,78,000/- has become due against the petitioner and co-promisors. He had no objection about that amount and, therefore, he moved an application before the prescribed authority and sought order for issuing notice to the other borrowers. The prescribed authority vide order dated 12.1.2004 passed an order to attach the property of the petitioner and this order is not under challenge before this Court as the petitioner decided to challenge the order dated 18.8.2004 and consequential attachment warrant only.

In view of the above facts, it is clear that the petitioner never raised dispute about his liability

despite having full notice of his liability as determined by the authorised officer vide order Annex.2 and thereafter, by order dated 19.8.2003.

The petitioner has not challenged the orders dated 12.1.2004 even by which the petitioner's property was attached and order dated 19.8.2003 by which the total dues were determined by the prescribed authority, till 2005 and even when the petitioner chose to challenge the order dated 18.8.2004 by which the property of the petitioner was sought to be auctioned. The present matter is not an appeal against the order passed by the prescribed authority.

It is true that in case of Chet Ram (supra), the matter was considered by the Division Bench of this Court but to judge the vires of Section 13 of the Act of 1974 only. It is true that for determination of the liability, the procedure is required to be followed as provided in the Act of 1974 so as to not cause any prejudice to the weaker party.

The facts of the instant case clearly reveals that the petitioner has raised objections only for the sake of objections without disputing his liability. The property was mortgaged in the year 1987 and is sought to be saved by saying that the petitioner along with his co-sharers partitioned the property on 27.3.1998.

If the petitioner's contention is accepted that the property was partitioned in the year 1998 by Annex.3, then there is no hurdle even for the sale of the entire property which came to the share of the petitioner in the partition dated 27.3.1998 and the prescribed authority was right in proceeding against the specific property of the petitioner as the prescribed authority would be free to decide the case of the other co-sharers afterwards.

The contention of the petitioner that the prescribed authority should have proceeded simultaneously with other co-sharers has no legal foundation in view of the fact that the petitioner's liability is not in dispute and it is the choice of the financier to recover the amount which he can recover conveniently from the borrower in accordance with law and by following procedure.

That being the position, the judgment in the case of Chet Ram (supra), relied upon by learned counsel, has no application in the facts of this case as discussed above. Further, the petitioner despite having knowledge of the order of prescribed authority holding him liable for the amount, has not challenged the liability, therefore also, the petitioner cannot take a plea that he had no knowledge of the determination of the liability by the prescribed

authority.

In view of the above discussion, I do not find any merit in this writ petition and the same is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya